



STATE OF UTAH
NATURAL RESOURCES
Oil, Gas & Mining

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Dee C. Hansen, Executive Director
Dianne R. Nielson, Ph.D., Division Director

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February 26, 1985

TO: Files

FROM: Dianne R. Nielson, Director *Done by mlr*

RE: Board Jurisdiction in the Division vs. Co-op Mining Company, Docket Number 84-040

The purpose of this memorandum is to clarify the issue of violations of the Board of Oil, Gas and Mining's Cessation Order, issued in the above-captioned cause. Attached is a memo of October 9, 1984, from Assistant Attorney General Barbara W. Roberts, summarizing the events of this issue.

At the July 29, 1984 Board Hearing, the Board ordered Co-op Mining Company to cease all mining operations under their Interim Program Permit. Judge Bunnell upheld the Board's Cessation Order at a September 5, 1984, hearing in the Seventh District Court. These events are summarized in the attached memo. At the time the order to cease mining operations was issued by the Board, and when it was reaffirmed by the Seventh District Court ruling, the cessation of mining operations, in accordance with that order, was under the jurisdiction of the Board of Oil, Gas and Mining, and later also the Seventh District Court. The Division continued to perform inspections, based on Permanent Program Performance Standards. However, issues related to cessation of mining operations were under the jurisdiction and review of the Board and Court, not the Division. Loading and hauling of coal qualifies as a mining activity which was prohibited under the Cessation Order.

When the Division determined that Co-op was loading coal, it notified the Board and sent the September 12, 1984, letter to Co-op. This was done at the Board's concurrence. On September 27, 1984, the Board was informed that Co-op was loading and hauling coal from the permit area. The Board instructed the Assistant Attorney General to notify Co-op to cease loading and hauling of coal or the Board would go back to court for a further order and imposition of civil penalties. Co-op ceased loading and hauling activities.

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MEMORANDUM - File
February 26, 1985

The actions of the Board were appropriate actions under the state program. It would have been inappropriate for the Division to take further action, for the following reasons:

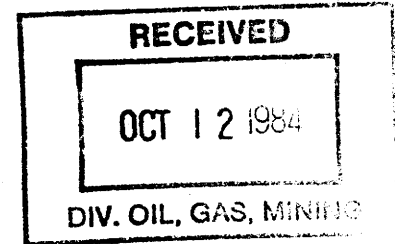
1. The Board and the District Court are higher authorities than the Division, which was the petitioner, in this case.
2. The Board was performing its responsibilities, in accordance with the state program.
3. The Board issued an "order to cease mining operation," based on evidence presented on the record before the Board. At issue was Co-op's failure to supply sufficient information for a Determination of Completion regarding their Permanent Program Permit Application. This is not the same as a "Cessation Order," which is issued by the Division on the basis of an on-site inspection.

mjm
Attachment
cc: R. Daniels
R. Hagen
J. Helfrich
A. Klein
B. Roberts
0196V-4&5

Orig. file
cc Mine file
R Daniels
J Helrich
J. Smith
DR Nielson



THE ATTORNEY GENERAL
STATE OF UTAH
DAVID L. WILKINSON
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PAUL M. TINKER
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MEMORANDUM

WILLIAM T. EVANS, CHIEF
Human Resources Division

DONALD S. COLEMAN, CHIEF
Physical Resources Division

STEPHEN G. SCHWENDIMAN, CHIEF
Tax & Business Regulation Division

EARL F. DORIUS, CHIEF
Governmental Affairs Division

PAUL M. WARNER, CHIEF
Litigation Division

TO: DIANNE R. NIELSON, Director
Division of Oil, Gas and Mining

FROM: BARBARA W. ROBERTS
Assistant Attorney General

DATE: October 9, 1984

RE: Docket 84-040, Division vs. Co-op Mining Company

This memo comprises a summary of the events which took place with regard to the Division vs. Co-op Mining Company (Docket No. 84-040) subsequent to the July 29, 1984 Board hearing.

On August 2, 1984, the State was served with a Petition for Review which had been filed with the Seventh District Court in Emery County. Judge Bunnell had signed an Order staying enforcement of the Board's Order pending arguments as to whether the State should be preliminarily enjoined from enforcing its Order. I responded with a Motion to Quash and for Dissolution of the Stay Pending Appeal.

A hearing was set for September 5 in Castle Dale. Both myself and representatives from Co-op Mining Company, Kenneth L. Rothery and Carl E. Kingston, were present. It became apparent early on that Judge Bunnell had been persuaded by my memoranda to the Court in that he determined that Co-op was not entitled to a preliminary injunction based upon the grounds offered in Co-op's Petition for Review.

At the close of the hearing, I informed Wendell Owen that all mining activities at the Bear Creek mine were to cease at 6:00 a.m. the following morning, September 6.

Oct 22/84

TO:
Dianne R. Nielson
October 9, 1984
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Sometime subsequent to that date, it was determined by Division personnel that Co-op was loading coal into trucks from their stockpile. By letter dated September 12, 1984, I informed Wendell that, although the sale of the coal was not prohibited, the loading of coal is a mining activity and is prohibited under the Board's Order.

Thereafter, on September 27, Ken Wyett and Tom Wright observed at least two fully loaded trucks leaving the Bear Creek facility. I contacted Carl Kingston by phone on September 28 and informed him that the Board Order disallowed this activity and suggested that he contact Co-op immediately and tell them to cease all loading of coal. He agreed to call Wendell at once.

As far as I am aware, no further violation of the Board's Order took place prior to the Division's issuance of a positive determination of completeness during the week of October 1.

If I can supply further information to you on this matter, please contact me.

BWR/dp

*Red Jch
10/22*

DIANNE:

*can you fill me in on the status of
the alleged violation of the Board's Order.*

Sanbyou Joe